

| | | | | | | |
|---|--|--------------------------------|---------------------|---|---------------------------|--------------------------------|
| AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT | | | 1. CONTRACT ID CODE | | PAGE OF PAGES 1 2 | |
| 2. AMENDMENT/MODIFICATION NO. 0001 | | 3. EFFECTIVE DATE 22 Jul 05 | | 4. REQUISITION/PURCHASE REQ. NO. | | 5. PROJECT NO. (If applicable) |
| 6. ISSUED BY CODE | | | | 7. ADMINISTERED BY (If other than Item 6) CODE | | |
| Contracting Division USAED, Honolulu, Bldg 1507 Ft Shafter, HI 96858-5440 | | | | | | |
| 8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State, and Zip Code) | | | | <input checked="" type="checkbox"/> 9A. AMENDMENT OF SOLICITATION NO. W9128A-05-R-0009 | | |
| | | | | <input type="checkbox"/> 9B. DATED (SEE ITEM 11) 7/8/05 | | |
| | | | | <input type="checkbox"/> 10A. MODIFICATION OF CONTRACT/ORDER NO. | | |
| | | | | <input type="checkbox"/> 10B. DATED (SEE ITEM 13) | | |
| CODE | | FACILITY CODE | | | | |

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☒ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☒ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning ___1___ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

| | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. |
| <input type="checkbox"/> | B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b). |
| <input type="checkbox"/> | C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: |
| <input type="checkbox"/> | D. OTHER (Specify type of modification and authority) |

E. IMPORTANT: Contractor ☐ is not, ☐ is required to sign this document and return ___ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

FY05/FY06 Drum Road Upgrade, Phase I and II, Helemano, Oahu, Hawaii

See Page 2 of 2 Pages

| | | | |
|---|------------------|--|------------------|
| 15A. NAME AND TITLE OF SIGNER (Type or print) | | 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) | |
| 15B. CONTRACTOR/OFFEROR | 15C. DATE SIGNED | 16B. UNITED STATES OF AMERICA | 16C. DATE SIGNED |
| (Signature of person authorized to sign) | | BY (Signature of Contracting Officer) | |

CHANGES TO THE SOLICITATION. Attached hereto are new and revised pages to the solicitation. The revision marked "(Am-0001)" is shown on each page.

1. REVISED PAGES/PROVISIONS/CLAUSES/PARAGRAPHS: Attached hereto are revised pages to the solicitation. The revision marked "(Am-0001)" is shown on each page. Changes are indicated in **bold**.

Page TOC-1 - Table of Contents

Section 00100
Pages 00100-5, 00100-14, 00100-16

Section 00120
Pages 00120-1 through 00120-13

Section 00700
Page 00700-101

2. DELETED PROVISIONS/CLAUSES:
Following are deleted provisions/clauses:

Section 00100
Pages 00100-7 through 00100-13, 52.232-27 Prompt Payment for Construction Contracts

Section 00700
Pages 00700-10 and 00700-11, 52.204-7 Central Contractor Registration
Pages 00700-78 and 00700-79, 52.247-63 Preference for U.S.-Flag Air Carriers
Page 00700-95, 252.227-7022 Government Rights (Unlimited)

3. NEW PAGES:
Following are new pages to the solicitation:

Section 00700
Pages 00700-102 through 00700-112

Section 00900
Pages 00900-1 through 00900-2

4. The proposal due date of August 8, 2005, 2:00 P.M., Hawaiian Standard Time, remains unchanged.

REQUEST FOR PROPOSALS NO. W9128A-05-R-0009

MAIN TABLE OF CONTENTS

FY05/FY06 Drum Road Upgrade, Phase I and II, Helemano, Oahu, Hawaii

| | |
|----------------------|--|
| Section 00010 | SF 1442, Proposal Schedule |
| Section 00100 | Bidding Schedule/Instruction to Bidders Appendix A (Sample Small Business Subcontracting Plan) |
| Section 00120 | Proposal Submission Requirements and Evaluation Factors |
| Section 00600 | Representations & Certifications Appendix A (SF LLL) |
| Section 00700 | Contract Clauses Appendix A (Wage Rates) |
| Section 00800 | Special Contract Requirements Appendix A (Project Signs) |
| Section 00900 | Questions and Answers |
| Division 1 | Section 01010 (Statement of Work) |

Instruction to Offerors

1. This procurement is UNRESTRICTED.
2. Offerors are required to COMPLETE AND RETURN the following sections of this solicitation: Section 00010 (pages 00010-1 and 00010-2), Section 00600 (ALL) and all Appendices. Please note that the representations and certifications must also be completed electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. Contractors shall also follow instructions in Section 00120, "Proposal Submission Requirements and Evaluation Factors".
3. See Section 00700, DFARS clause 252.204-7004, Alternate A, regarding registration in the CCR database. Lack of registration in the CCR database will make an offeror ineligible for award.
4. Offerors' attention are directed to the provisions of paragraph 11 of the **Statement** of Work, Section 01010. Notices contained therein are provided to inform you as to the current status of these matters.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

52.215-16 FACILITIES CAPITAL COST OF MONEY (JUN 2003)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR 31.205-10(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of **2 separate** firm fixed price contracts resulting from this solicitation.

(End of clause)

52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995) – ALTERNATE I (FEB 1995)

IMPORTANT NOTICE:

All potential offerors are advised of the following regarding the site visit for Phase 1 of the solicitation. A site visit for Phase 1 is not an absolute pre-condition to advancing to Phase 2 since Phase 1 deals with qualifying based on experience involving work on relevant construction contracts since July 1, 1999. No price proposal is required for Phase 1. Site visits will be determined at a later date for Phase 2A and 2B.

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) An organized site visit for Phase 1 has been scheduled for --

July 25, 2005, 0900 hours

(c) Participants will meet at --

the Sentry Gate entering Helemano Military Reservation **and must present a picture ID.**

(d) The potential offerors will be required to fax the following information at least 4 working days prior to date of visit:

- (1) number of personnel
- (2) number of vehicles w/ license plate #

(e) Offerors will **be** require to provide their own 4-wheel drive vehicles **and present the current Vehicle Registration. Should a rental car be used, the original rental agreement must be shown at the site visit to the Government representative.**

(f) All present at site visit(s) are to stay within the Government easement for Drum Road at all times. (No wandering off of Drum Road)

(g) Point of Contact for site visit information is:

Name: **Mr. Paul Regan**

Address: US Army Engineer District, Honolulu

Attn: CEPOH-EC-CS

Bldg 230

Ft Shafter, Hawaii 96858-5440

Telephone: (808) **655-2318**

Facsimile: (808) 655-2312

(h) Cancellation of above date will be due to inclement weather and will be rescheduled within a week should cancellation occur.

(End of provision)

52.236-28 PREPARATION OF PROPOSALS--CONSTRUCTION (OCT 1997)

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a proposal must initial each erasure or change

Failure to submit a bid guarantee by the time and date set for receipt of proposals may be cause for rejection of a proposal, except as provided in provision 52.215-1, Instructions to Offerors--Competitive Acquisition.

[End of Statement]

S-36.2 MAGNITUDE OF THE PROPOSED PROJECT [FAR 36.204]

(a) Physical Characteristics: Upgrade approximately 23.5 miles of existing dirt and gravel road, known as Drum Road, to a wider, all-weathered roadway that traverses from Army's Helemano Military Reservation into Army's Kahuku Training Area. Upgrade includes but is not limited to improved sight distances at hairpin turns, roadside protections at drop-offs, provide slope stabilization and rock-fall mitigation, and to demolish existing and install new structures at the existing 16 stream/gulch crossings.

(b) Estimated Price Range: The estimated price range of this work is between \$25,000,000 and \$100,000,000.

[End of Statement]

S-36.33 NOTIFICATION TO OFFERORS – ACCESS TO ARMY INSTALLATIONS

All vehicle operators must be prepared to provide a valid driver's license, vehicle registration, certificate of insurance and current safety inspection to the security guard prior to entry to the Installation. Offerors should anticipate a delay in entering the Installation and allow sufficient time when attending a site visit or pre-proposal conference or hand delivering an offer.

52.222-5 Davis-Bacon Act—Secondary Site of the Work (Jul 2005)

(a)(1) The offeror shall notify the Government if the offeror intends to perform work at any secondary site of the work, as defined in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, of this solicitation.

(2) If the offeror is unsure if a planned work site satisfies the criteria for a secondary site of the work, the offeror shall request a determination from the Contracting Officer.

(b)(1) If the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site of the work, the offeror shall request a wage determination from the Contracting Officer.

(2) The due date for receipt of offers will not be extended as a result of an offeror's request for a wage determination for a secondary site of the work.

SECTION 00120

PROPOSAL SUBMISSION REQUIREMENTS AND EVALUATION FACTORS

1.0 GENERAL

1.1. Cost of Preparing Proposals

The Government will not reimburse any Offeror any costs incurred in responding to this Request for Proposal.

1.2. Inquiries

Address all inquiries regarding this Request for Proposals to:

U.S. Army Engineer District, Honolulu
Attn: Mr. Kent Tamai (CEPOH-CT-C)
Fort Shafter, Hawaii 96858-5440
Phone No. (808) 438-9700
Fax No. (808) 438-8588
E-Mail: kent.a.tamai@usace.army.mil

1.3 Submittal of Proposals

Submit proposal packages to the US Army Corps of Engineers ("the Government") as shown in Block 8 of Standard Form 1442.

Proposals received by the Government after the date and time set for receipt of proposals will be handled in accordance with the requirements of Provision "52.215-1, Instructions to Offerors—Competitive Acquisition (Jan 2004)," subparagraph (c), found in Section 00100.

Proposals will be requested in two (2) phases for this best value source selection process.

Submit Non-Price proposals (Volume I) in Phase 1.

Submit Price proposals (Volume II) and Subcontracting Plan (Volume III) in Phase 2A **(FY05 project)**. Phase 2A proposals will be requested after completion of the Phase 1 evaluation. Eligible participants will be notified by Request for Proposal No. W9128A-05-R-0009A.

Submit Price proposals (Volume IV) and Subcontracting Plan (Volume V) in Phase 2B **(FY06 project)**. Note: Phase 2B proposals will be requested and submitted at a later date. Eligible participants will be notified by Request for Proposal No. W9128A-05-R-0009B.

1.4 Proposal Evaluation

The Government will evaluate offers in accordance with the EVALUATION FACTORS described below.

Phase 1 proposals will be evaluated in one (1) step. In Phase 1, each factor will be rated Acceptable, Unacceptable, or Neutral, where applicable. An Offeror must be rated Acceptable, or Neutral, where applicable, on all factors in Phase 1 in order to participate in the next phase of the evaluation. A rating of Unacceptable on any factor in Phase 1 will automatically eliminate an Offeror from consideration in the succeeding phase of the evaluation. Offerors that have not been eliminated in Phase 1 will be requested to submit proposals in Phase 2.

Phase 2 proposals will be evaluated in two (2) steps. **Phase 2A will be conducted after completion of Phase 1 evaluation.** Phase 2B will be conducted after award of a contract for Phase 2A.

1.4.1 Phase 1, Non-Price Evaluation

Phase 1 will involve an evaluation of the Offeror's qualifications. An acceptable or neutral rating, where applicable, for each factor is required for an Offeror to participate in Phase 2. Failure to receive an acceptable or neutral rating, where applicable, for any factor will result in rejection of the Offeror's proposal notwithstanding acceptable ratings for other factors. Only those Offerors receiving an acceptable or neutral rating, where applicable, on all factors in Phase 1 will be requested to submit proposals in Phase 2.

1.4.2 Phase 2, Best Value Evaluation

Only those Offerors that received acceptable or a neutral rating, where applicable, on all factors in Phase 1 will be offered the opportunity to submit proposals in Phase 2. Due to project funding limitations, Phase 2 proposals will be evaluated in two (2) steps. The FY05 funding package will be evaluated in Phase 2A. After award of a contract for the FY05 funding package, proposals will be requested and evaluated for the FY06 funding package in Phase 2B.

1.4.2.1 Phase 2A, FY05 Funding Package

In Phase 2A, all Offerors determined acceptable in Phase 1 will be offered the opportunity to submit an offer proposing the length of road that can be completed within the stated funding, along with the performance period to complete the proposed length of road.

1.4.2.2 Phase 2B, FY06 Funding Package

In Phase 2B, all Offerors determined acceptable in Phase 1 will be offered the opportunity to propose a price to complete the remaining length of road—from the end of the road awarded in Phase 2A (FY05 funding package) to the end of the project.

1.5 Contract Award

The Government intends to award **2 separate firm fixed price** contracts to the Offeror(s) whose proposal(s) provides the best value to the Government. The Government intends to award without discussions to the Offeror with the technically acceptable proposal providing the best value to the Government, in accordance with the provisions of this solicitation and applicable acquisition regulations. However during the evaluation of the proposals, clarifications may be requested. Those proposals that receive an unacceptable rating on any of the non-price factors in Phase 1 will be determined unacceptable and may not receive further consideration for award. However, if discussions are determined necessary during Phase 1, the Contracting Officer will conduct discussions. Upon completing the evaluation of all proposals in Phase 1, as long as there is at least one acceptable proposal, the Contracting Officer may, in accordance with the provisions of this solicitation and applicable acquisition regulations, request Phase 2 proposals.

Phase 2A, FY05 Funding Package – Award will be made to the Offeror proposing the longest length of road. In case of a tie, the Offeror proposing the longest length of road and the shortest performance period will be awarded the contract.

Phase 2B, FY06 Funding Package – Award will be made to the Offeror proposing the lowest acceptable price.

If discussions are determined necessary during Phase 2A or Phase 2B, discussions will be conducted only with Offerors determined to be within the competitive range. Upon conclusion of discussions, the

Contracting Officer may request final proposal revisions and proceed to award a contract without further discussions or notice.

2.0 PROPOSAL FORMAT

2.1 General

Submit proposals in two (2) phases and in five (5) separate envelopes/volumes as described below. All proposal revisions shall be submitted as page replacements with revised text readily identifiable, e.g. bold face print or underlining. Proposal replacement pages shall be clearly marked "REVISED", shall show the date of revision, shall be submitted in the appropriate number of copies (e.g., if four copies of the original page was required, then four copies of the revised page will also be required).

2.1.1 Phase 1, Volume I, Non-Price Proposal

One envelope shall be clearly marked, "VOLUME I, NON-PRICE PROPOSAL, RFP NO. W9128A-05-R-0009" It shall contain an original and six (6) copies of the items provided in response to the Non-Price Factors described in paragraph 2.5, and the following:

- If the Offeror is a joint venture (JV), two copies (certified as a true copy) of the Offeror's executed joint venture agreement.
- One (1) original and two (2) copies of the Offeror's completed Standard Form (SF) 1442, using a printed copy of the SF 1442 that has been issued under this solicitation.
- One (1) original and two (2) copies of the Offeror's completed Section 00600, Representations and Certifications, using a printed copy of Section 00600 included in this solicitation. Please note that the representations and certifications must also be completed electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>.
- One (1) original and two (2) copies of the Offeror's completed, if applicable, SF LLL, Disclosure of Lobbying Activities, using a printed copy of the SF LLL included as Appendix A in Section 00600.

2.1.2 Phase 2A, FY05 Funding Package

Proposals in Phase 2A shall be submitted in two (2) separate envelopes.

2.1.2.1 Volume II, Price Proposal

The first envelope shall be clearly marked, "VOLUME II, PRICE PROPOSAL – FY05, RFP NO. W9128A-05-R-0009A." It shall contain one original and two copies of the Offeror's completed Standard Form (SF) 1442, using a printed copy of the SF 1442 included in this solicitation, and the following:

- One original and two copies of Section 00010, Price Proposal Schedule. Indicate whether or not Facilities Capital Cost of Money is included in the Offeror's costs of performing the work. Proposals that state that Facilities Capital Cost of Money is not included, or proposals that do not address Facilities Capital Cost of Money, will be deemed to have waived Facilities Capital Cost of Money.
- One electronic copy of the Price Proposal, formatted in either Microsoft Excel 2000 or Word for Windows 2000 or an earlier version of the same. Submit the electronic copy on a three and one-half inch (3-1/2") floppy diskette, IBM compatible, labeled with the offeror's name, the solicitation number and title, and the words, "Price Proposal - Electronic Copy."

- One original bid **guarantee** in the form and amount that is required by the provision entitled, "PENAL SUM AND FORM OF OFFER GUARANTEE," in Section 00100, and other pertinent provisions and clauses in this solicitation.

2.1.2.2 Volume III, Subcontracting Plan (only required from Large Business Concerns)

If the Offeror is a large business concern, the Offeror shall submit a subcontracting plan in accordance with FAR 52.219-9 (See Section 00100, Appendix A for a sample). If the Offeror is a joint-venture (JV), the Offeror shall submit a copy of the JV agreement. In addition, depending on the size status of the JV, the Offeror shall submit a subcontracting plan.

The second envelope shall be clearly marked, "VOLUME III, SUBCONTRACTING PLAN – FY05, RFP NO. W9128A-05-R-0009A". Volume III will not be evaluated or rated. Only the selected Offeror's plan will be reviewed and must be approved prior to award of the contract.

2.1.3 Phase 2B, FY06 Funding Package

Proposals in Phase 2B shall be submitted in two (2) separate envelopes.

2.1.3.1 Volume IV, Price Proposal

The first envelope shall be clearly marked, "VOLUME IV, PRICE PROPOSAL – FY06, RFP NO. W9128A-05-R-0009B." It shall contain one original and two copies of the Offeror's completed Standard Form (SF) 1442, using a printed copy of the SF 1442 included in this solicitation, and the following:

- One original and two copies of Section 00010, Price Proposal Schedule. Indicate whether or not Facilities Capital Cost of Money is included in the Offeror's costs of performing the work. Proposals that state that Facilities Capital Cost of Money is not included, or proposals that do not address Facilities Capital Cost of Money, will be deemed to have waived Facilities Capital Cost of Money.
- One electronic copy of the Price Proposal, formatted in either Microsoft Excel 2000 or Word for Windows 2000 or an earlier version of the same. Submit the electronic copy on a three and one-half inch (3-1/2") floppy diskette, IBM compatible, labeled with the offeror's name, the solicitation number and title, and the words, "Price Proposal - Electronic Copy."
- One original bid bond in the form and amount that is required by the provision entitled, "PENAL SUM AND FORM OF OFFER GUARANTEE," in Section 00100, and other pertinent provisions and clauses in this solicitation.

2.1.3.2 Volume V, Subcontracting Plan (only required from Large Business Concerns)

If the Offeror is a large business concern, the Offeror shall submit a subcontracting plan in accordance with FAR 52.219-9 (See Section 00100, Appendix A for a sample). If the Offeror is a joint-venture (JV), the Offeror shall submit a copy of the JV agreement. In addition, depending on the size status of the JV, the Offeror shall submit a subcontracting plan.

The second envelope shall be clearly marked, "VOLUME V, SUBCONTRACTING PLAN – FY06, RFP NO. W9128A-05-R-0009B". Volume V will not be evaluated or rated. Only the selected Offeror's plan will be reviewed and must be approved prior to award of the contract.

2.1.4 Table of Contents

Proposal volumes shall be tabbed. Each of the proposal volumes shall include a Table of Contents that includes the title of the subject matter discussed therein and the page number where the information can be found. The volumes shall be organized in the same order listed in paragraph 2.4 of this Section. Each evaluation factor shall be separately tabbed. Proposals that are not correctly tabbed may be considered unacceptable.

2.2. Proposal Presentation

Prepare proposals in the English language.

Proposals shall completely address the requirements of the RFP. Elaborate format, binders, special reproduction techniques, and the like are not necessary. However, the proposal shall be neatly organized and bound. All pages, except divider tabs, shall be numbered. Except for divider tabs and revisions sheets, as noted above, plain white 8-1/2" x 11" bond shall be used. However, if drawings or other graphics are included, Offerors may reduce them only to the extent that legibility is not lost.

There is no limit to the number of pages in the non-price proposal. Pages shall be single-sided and shall be typed. Type pitch shall be 10 pitch or larger.

Information presented should be organized so as to pertain to only the evaluation factor in which section the information is presented. Information pertaining to more than one evaluation factor should be repeated in the tab for each factor.

2.3 Proposal Content

Proposals shall be in a narrative format, organized and titled so that each section of the proposal follows the order and format of the factors set forth below in paragraph 2.5, "VOLUME I, NON-PRICE PROPOSAL".

Any information, presented in a proposal that the Offeror wants safeguarded from disclosure to other parties must be identified and labeled in accordance with the requirements of Provision "52.215-1, Instructions to Offerors—Competitive Acquisition (Jan 2004)," subparagraph (e), which is found in Section 00100 of this solicitation. The Government will endeavor to honor the restrictions against release requested by Offerors, to the extent permitted under United States law and regulations.

The proposal must set forth full, accurate, and complete information as required by this solicitation. The Government will rely on such information in the award of a contract. By submission of an offer, the Offeror agrees that all items in its proposal (scope, price, performance period, targets for utilization of eligible SDB concerns, etc.) will be used throughout the duration of the contract.

2.4 Evaluation Factors

Proposals will be evaluated on the factors listed below. Offerors are required to provide data addressing all stated factors in a clear and understandable format. If an Offeror does not have data relating to a specific factor, it shall be clearly stated in the proposal. Proposals that do not clearly address all factors may be considered unacceptable and may not receive further consideration.

All factors have equal importance.

NON-PRICE FACTORS (Phase 1/Volume I):

Factor I, Construction Experience

Factor II, Past Performance

Factor III, Utilization of Small Business Concerns.

PRICE & TIME (Phase 2/Volumes II & IV)

2.5 Phase 1/Volume I, Non-Price Proposal

Data provided in response to the non-price factors described below shall be included in Volume I, "Non-Price Proposal".

2.5.1 Relevant Contracts

For a contract to be considered relevant, the Offeror's contract, at any tier level, must have been awarded to the Offeror and have been declared substantially complete between 1 July 1999 and 1 July 2005, and each contract must have involved at least three (3) of the characteristics listed below for a Construction contract. Evidence of substantial completion must be included in the proposal in order for a contract to be considered relevant.

If the Offeror is submitting contracts based on its experience as a subcontractor, and not as the prime contractor, then the characteristics listed below must apply to the subcontract in order for the experience to be considered relevant. All data shall be provided in terms of the subcontract it was awarded, not the overall prime contract.

If the Offeror intends to rely on its joint venture partner's experience, the Offeror shall submit a Contract Data Sheet and narrative description for the joint venture partner's relevant contract.

IDIQ-type contracts may be submitted only if a single task order on that contract involves at least three (3) of the characteristics for a Construction contract. Task orders may not be combined in order for the contract to meet the criteria for relevancy. The submitted task order must meet the substantially complete date criteria stated above.

| Characteristic | Construction Contracts |
|----------------|--|
| 1 | Contract amount was equal to or greater than \$20 million |
| 2 | Single contract involving the construction of at least 1 mile of road |
| 3 | Offeror was the Prime contractor on a \$20 million contract and involved managing subcontractors |
| 4 | Contract was located in a tropical environment |
| 5 | Corps of Engineers contract as a prime contractor |
| 6 | Work was managed through the use of a Network Analysis System (NAS) |

2.5.2 Factor I, Construction Experience

Data provided in support of this factor shall clearly demonstrate the Offeror's ability to meet the requirements of the contract based on its experience on relevant contracts as defined in paragraph 2.5.1. Only the experience considered relevant to this project will be considered.

For each of the Offeror's contracts, at any tier level, provided in support of this factor, a Contract Data Sheet shall be completed. This sheet is included as Attachment 1 to this specification section. All requested information must be provided. Failure to provide any of the requested data may be cause to eliminate a contract from consideration in the evaluation. Only the form provided as Attachment 1 will be accepted. Data submitted in any other format will be eliminated from consideration.

The Offeror shall provide a narrative description of each relevant contract included in its proposal in addition to the Contract Data Sheet. The narrative shall clearly explain how the contract fulfills the experience characteristics for which it is being submitted. No more than five (5) pages shall be submitted for each contract, including the Contract Data Sheet and any continuation pages. Pages exceeding this 5-page limit will not be considered.

2.5.2.1 Evaluation Standards

| | |
|--------------|--|
| Acceptable | The Offeror has submitted one or more relevant contracts (para 2.5.1). These contracts demonstrate that the Offeror has had experience in all of the six (6) listed Construction Contracts characteristics. Evidence of substantial completion is provided for all relevant contracts. |
| Unacceptable | Based on the submitted relevant contracts, the Offeror has not demonstrated experience on at least one of the Construction Contract characteristics, or evidence of substantial completion is not provided for at least one relevant contract. |

2.5.3 Factor II, Past Performance

Data provided in support of this factor shall clearly demonstrate the Offeror's ability to meet the requirements of the contract based on his past performance history on relevant contracts. Only past performance on relevant contracts will be considered (see paragraph 2.5.1 above).

A Performance Evaluation Questionnaire is provided at the end of this section as Attachment 2. For each of the relevant contracts identified in Factor I, Offerors shall complete Part A. **When completing a performance evaluation questionnaire as a prime contractor, offerors shall send the partially completed forms to the Contracting Officer (respondent) or equivalent, for the identified contract for completion of Part B. When completing a performance evaluation questionnaire as a subcontractor, offerors shall send the partially completed forms to the prime contractor or equivalent. Questionnaires for work performed as a subcontractor that is completed by the Contracting Officer or equivalent will not be accepted.** Only one questionnaire for each relevant contract will be accepted. The Offeror shall include the completed performance evaluation questionnaires (Parts A and B) in Volume I of its proposal.

In addition to the Performance Evaluation Questionnaire, any agency-generated performance evaluation records shall be submitted.

The Government may use data provided by the Offeror and data obtained from other sources. While the Government may elect to consider data obtained from other sources, the burden of providing thorough and complete past performance information rests with the Offeror.

2.5.3.1 Evaluation Standards

| | |
|--------------|---|
| Acceptable | The Offeror was rated no less than satisfactory on all questions in the questionnaires; all agency-generated performance evaluation records indicate satisfactory or better performance; and the Offeror must not have received a final Unsatisfactory performance evaluation on any Federal Government contract since 1 July 1999. |
| Unacceptable | The Offeror was rated less than Satisfactory on at least one question on one of the Performance Evaluation questionnaires; or any agency-generated performance evaluation record indicates less than satisfactory performance; or the Offeror has received a final Unsatisfactory performance evaluation on at least one Federal Government contract since 1 July 1999. |
| Neutral | The Offeror does not have a record of any final performance evaluation. |

2.5.4 Factor III, Utilization of Small Business Concerns.

Offerors shall submit data that demonstrate its past performance in complying with its Small Business Subcontracting Plans. Small Business includes small disadvantaged businesses (SDB), women-owned small businesses, HUBZone small businesses, veteran-owned small businesses and service disabled veteran-owned small businesses.

Provide SF 294's, "Subcontracting Report for Individual Contracts" for all submitted relevant projects. Provide reasonable justifications if goals were not met. **If the relevant contracts did not require the submission of SF 294's, provide SF 294's on any other completed contracts. If goals were not met, provide reasonable justifications. If the offeror had no contracts which required an SF 294, a Neutral rating will be given.**

2.5.4.1 Evaluation Standards

| | |
|----------------|--|
| Acceptable | Offeror's Small Business Subcontracting Plan goals were met or reasonable justifications for not achieving these goals provided. Offers from Small Business concerns will receive an acceptable rating.. |
| Unacceptable | Offeror's Small Business Subcontracting Plan goals were not met and no justification for not achieving these goals is provided. |
| Neutral | The Offeror was not required to submit SF 294's on relevant contracts. |

2.6 Phase 2/Volumes II & IV, Price Proposal

Those Offerors submitting proposals determined acceptable in Phase 1 will be offered the opportunity to submit a proposal in Phase 2.

2.6.1 Phase 2A, FY05 Funding Package (Volume II)

Offerors shall complete Proposal Schedule A in Section 00010. The total amount available for award in this Phase is \$24,110,000.00. Offerors shall provide a price for each CLIN where indicated such that the total for all CLINs in this schedule equals \$24,110,000.00. In addition, Offerors shall fill in the line indicating the total length of road (starting at Station 0+00), to the nearest meter, that will be completed in this phase, as well as a performance period to complete all work necessary to fulfill the requirements of the FY05 Funding Package contract.

2.6.2 Phase 2B, FY06 Funding Package (Volume IV)

Offerors shall complete Proposal Schedule B in Section 00010. Offerors shall provide a price for each CLIN to fulfill the requirements of the FY06 Funding Package contract.

CONTRACT DATA SHEET

RFP No. W9128A-05-R-0009

Reference #: Vol I, Tab ____, Contract # ____

The data provided on this sheet will provide supporting information for the Offeror's Experience and Past Performance (Factors I & II). Use this form to document relevant contracts that were substantially completed between 1 July 1999 and 1 July 2005. Properly referenced continuation sheets may be used if needed. Submit no more than 5 pages per contract -- data sheet plus continuation sheets.

Offeror's Name:

Phone Number:

Point of Contact:

Fax Number:

E-Mail Address:

Contract No: _____

Contract Title: _____

Location: _____

Type of Contract (i.e. firm-fixed, price, cost reimbursable, IDIQ, etc.): _____

Identify applicable characteristics (paragraph 2.5.1, 1 - 6): (Explain how each characteristic is met on continuation sheets)

| Characteristic | Construction Contracts | Met | Not Met |
|----------------|--|-----|---------|
| 1 | Contract amount was equal to or greater than \$20 million | | |
| 2 | Single contract involving the construction of at least 1 mile of road | | |
| 3 | Offeror was the Prime contractor on a \$20 million contract and involved managing subcontractors | | |
| 4 | Contract was located in a tropical environment | | |
| 5 | Corps of Engineers contract as a prime contractor | | |
| 6 | Work was managed through the use of a Network Analysis System (NAS) | | |

Contract Description:

Award Date: _____

Original Completion Date: _____

Actual Completion Date: _____

Award Amount: _____

Final Contract Price: _____

Was Offeror the PRIME or a SUB? _____

Percentage of Contract Performed by Offeror: _____

Type/scope of work performed by the Offeror:

Quality Awards, Letters of Appreciation/Commendation, Written Overall Performance Evaluations Received. List documents here, include document(s) in this tab.

Type and Extent of Subcontracting. List names of major subcontractors used.

Describe any other factors relevant to experience or past performance that demonstrate the Offeror's capabilities and qualifications in relation to the proposed contract.

End user (i.e. DPW, BCE, etc.) _____

Point of Contact (Name & Title): _____

Phone Number: _____ Fax Number _____

E-mail Address: _____

PERFORMANCE EVALUATION QUESTIONNAIRE

PART A (to be completed by Offeror)

Reference #: Vol I, Tab _____, Contract # _____

Name of Offeror: _____

Contract Number/Contract Title /Location _____

Contract Description: _____

Award Date: _____

Original Completion Date: _____

Actual Completion Date: _____

Award Amount: _____

Final Contract Price: _____

% of work and type of work performed by the Offeror: _____

=====

PART B (to be completed by Respondent)

Received: _____
(signature of Contracting Officer)

Organization Name: _____

Your Name: _____

Your Title: _____ Phone Number: _____

Your role on this contract: _____

Name and phone number of any additional person(s) who may or may not have a different opinion on this contractor's job performance.

1. Describe any special conditions affecting the work.

Circle the appropriate rating and provide supporting narrative below for questions 2 - 8

2. How would you rate the quality of construction in terms of compliance with the contract plans and specifications?

Unsatisfactory Marginal Satisfactory Very Good Outstanding

3. How would you rate the timeliness of performance, taking into account all excusable delays?

Unsatisfactory Marginal Satisfactory Very Good Outstanding

4. How would you rate the Offeror's ability and cooperativeness in complying with other contract terms and conditions?

Unsatisfactory Marginal Satisfactory Very Good Outstanding

5. How effective was the Offeror's management of the administrative aspects of performance, such as communicating and performing routine coordination?

Unsatisfactory

Marginal

Satisfactory

Very Good

Outstanding

6. How would you rate the overall performance of the Offeror? (Please provide comments, especially if Outstanding or Unsatisfactory)

Unsatisfactory

Marginal

Satisfactory

Very Good

Outstanding

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

*** This clause applies if the Contractor has made a negative response to the inquiry in the provision at DFRS 52.247-7022**

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor --

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties--

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for--

(i) Noncommercial items; or

(ii) Commercial items that--

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (OCT 2003)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR Part 1315.

(6) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to use:

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such

subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefore must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) Third-party deficiency reports--(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of --

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall --

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and
- (3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of Clause)

52.249-2 Termination for Convenience of the Government (Fixed-Price) (May 2004) –
Alternate I (Sep 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government --

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; *provided*, however, that the Contractor

(i) is not required to extend credit to any purchaser and

(ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by

- (1) the amount of payments previously made and
- (2) the contract price of work not terminated.

The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

- (1) For contract work performed before the effective date of termination, the total (without duplication of any items) of --

- (i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(1)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted --

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)

(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of Clause)

SECTION 00900
RESPONSES TO QUESTIONS
SUBMITTED BY PLANHOLDERS
FOR
RFP NO. W9128A-05-R-0009

From Lance Wilhelm, Kiewit Pacific, e-mail dated 7/14/05:

Q1: With regards to the Characteristics to determine relevance, Item 3 states "Offeror was the Prime contractor on a \$20 million contract and involved managing subcontractors". Would the contract need to be \$20 million at time of award as described in Characteristic No. 1, or could the contract be \$20 million at the time of completion?

A1. The Government will accept either the "award amount" or the "final contract price" being \$20 million.

From Lance Wilhelm, Kiewit Pacific, e-mail dated 7/14/05:

Q2. Paragraph 2.5.4 "Factor III, Utilization of Small Business Concerns", states that a SF294, "Subcontractor Report for Individual Contracts" must be submitted for all submitted relevant projects. How will proposals be evaluated if one or more submitted relevant project meets the required characteristics, but the projects did not generate a SF294? For examples, projects for other governmental agencies or for the private sector typically do not require the contractor to complete a SF294 or any other similar form. Nevertheless, these projects may well be relevant in every other way. In such a case, will the Offeror be given an Unacceptable, Acceptable or Neutral rating?

A2. See Amendment Am-0001.

From Lance Wilhelm, Kiewit Pacific, e-mail dated 7/18/05:

Q3. With regards to "Relevant Contracts", Characteristic #6 says that the work must have been managed through the use of a Network Analysis System. We understand a NAS to be a formal system for organizing definable units of work and ultimately using this data as inputs into a formal planning and scheduling platform such as Primavera. Therefore, would the use of Primavera Scheduling software as the official scheduling, planning and organizational platform for a submitted relevant project satisfy this characteristic?

A3. Primavera does meet the requirement for use of acceptable Network Analysis System. However, the Offeror shall also include in its narrative description of each relevant contract included in its proposal a clear explanation of how the contract fulfills the experience characteristics for which it is being submitted.

From Don McClarin, Parsons, e-mail dated 7/18/05:

Q4. Please confirm that the U.S. Army Corps of Engineers' Resident Management System (RMS/QCS) is considered a Network Analysis System for compliance with Relevant Contract Characteristic 6.

A4. RMS/QCS does NOT meet the NAS requirement for Relevant Contract Characteristic 6.

The United States Army Corps of Engineers has adopted the Unified Facilities Guide Specifications for Network Analysis Systems. The use of a Network Analysis System (NAS) on construction projects uses a Critical Path Method (CPM) approach that allows Government construction Project Managers, Contracting Officers and Program Managers to identify, manage, and resolve project and program problems and to make informed decisions.

The NAS is a graphic representation (CPM Network) of how a construction project is to be built. Mere bar charts are unacceptable. This includes the logical sequence of work events and the time required for each of these work events. With this information, the project length can be determined and time/scheduling management decisions can be evaluated.

From Don McClarin, Parsons, e-mail dated 7/18/05:

Q5. As a Relevant Contract, we would like to include a task order on an IDIQ for which we were a Joint Venture partner. We were the only partner (of the two) that performed on this particular task order. Please confirm that this is compliant with the term "prime contractor" in Relevant Contract Characteristics 3 and 5.

A5. No, it is not compliant with the term "prime contractor".

From Abby Siatu'u, Nan, e-mail dated 7/18/05:

Q6. Under Para. 2.1.2.1. of Section 00120 (Page 00120-4) it is stated that the Offeror shall provide "One original bid bond in the form and amount (\$24,110,000.00) that is required by the provision entitled, "PENAL SUM AND FORM OF OFFER GUARANTEE," in Section 00100, and other pertinent provisions and clauses in this solicitation." Please clarify if \$24,110,000.00 is the actual bid bond amount required as Section 00100 states that "This security shall be in the form of twenty percent (20%) of the offered price or three million dollars (\$3,000,000), whichever is less."

A6. See Amendment Am-0001.

From Don McClarin, Parsons, e-mail dated 7/21/05:

Q7. Regarding Factor III, how do we show Small Business participation for relevant commercial projects for which SF 294s are not prepared?

A7. See Amendment Am-0001.